



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

April 1, 2015

To:

Hon. Dale L. English
Circuit Court Judge
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Sandra L. Tarver
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Eric Toney
District Attorney
Fond du Lac County
160 South Macy Street
Fond du Lac, WI 54935

Roger S. Walker 198385
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

You are hereby notified that the Court has entered the following opinion and order:

2014AP1803-CR

State of Wisconsin v. Roger S. Walker (L.C. # 1997CF234)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Roger S. Walker appeals from an order denying his motion for an additional 764 days of sentence credit pursuant to WIS. STAT. § 973.155 (2013-14).¹ Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Because Walker received all of the credit to which he is entitled, we affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Walker was originally arrested and placed in custody in connection with this case on September 16, 1997. The State charged Walker with first-degree sexual assault of a child and a jury found him guilty. On August 17, 1999, the trial court imposed a twenty-year prison sentence and awarded Walker 700 days of presentence credit. Walker began serving his sentence and in 2001, his conviction was reversed and remanded for a new trial. Walker was released from custody in connection with this case and began serving a term of probation in a separate Green Lake County matter.² The State retried Walker and in February 2003, a second jury found Walker guilty of the sexual assault charge. The trial court revoked Walker's bail and on June 11, 2003, imposed a twenty-year prison sentence. The court withheld a decision on sentence credit and directed the parties to determine whether they could agree on the amount of credit due. Trial counsel submitted a request for 1,705 days of credit. Specifically, trial counsel requested 1,601 days for the time Walker spent in custody from September 16, 1997, the date of arrest, through February 3, 2002, the date of his release from custody following the reversal of his conviction. Trial counsel requested an additional 104 days for the time Walker spent in custody from February 28, 2003, when the court revoked bail following the second jury's verdict, through the date of his second sentencing on June 11, 2003. On June 19, 2003, the court entered an amended judgment of conviction reflecting an award of 1,705 days of sentence credit as "stipulated by the parties."

² It appears that after his release from prison, Walker violated the terms of his separate probation and was placed in custody on the unrelated probation hold.

On July 7, 2014, Walker filed a pro se motion seeking an additional 764 days of credit above and beyond the 1,705 days awarded by the trial court.³ The trial court denied the motion:

The Court is satisfied, based on its review of all of the responses and attached documentation, that the sentence credit calculated by the defendant's trial attorney is correct. The defendant is not entitled to any additional sentence credit in this case.

On appeal, Walker maintains that the trial court's sentence credit determination following his second trial failed to include the time he spent in custody awaiting his first trial and sentencing. We disagree. The 1,705 days of sentence credit reflected on his June 19, 2003 judgment is based on trial counsel's calculation, which expressly accounts for each and every day that elapsed from Walker's arrest on September 16, 1997, to his release in February 2002. This totals 1,601 days. The additional 104 days brings the total to 1,705 days.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

³ Walker asserted that the 1,705 days awarded did not include time spent in custody awaiting his first trial and sentencing. Walker sought credit from the date of his arrest on September 16, 1997, through October 20, 1999, when it appears he was transported to prison. The sixty-four-day discrepancy between Walker's calculation and the 700 days awarded on the original judgment is attributable to the fact that Walker was sentenced on August 17, 1999, not October 20, 1999. As pointed out by the State, pursuant to WIS. STAT. § 973.155(1)(a), Walker was entitled to presentence credit from arrest through sentencing and the original judgment correctly awarded 700 rather than 764 days of presentence credit. Thereafter, Walker was serving his prison sentence, albeit in the county jail. Regardless, Walker received credit for the additional sixty-four days pursuant to WIS. STAT. § 973.04 (when a sentence is vacated and a new sentence is imposed for the same crime, the defendant shall receive credit against the new sentence for the confinement previously served).